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TAX LIENS ON LAND HELD ADVERSELY FOR THE STATUTORY PERIOD. — It is customary for the legislature to provide that there shall be a lien on land for taxes due. Even though no lien is expressly created, as long as the statute provides for the sale of real estate such taxes in effect impose an encumbrance on the land.¹ Such legislation may be divided roughly into two classes: the first makes the tax a lien on the *corpus* of the land without regard to the state of the title; the second subjects to the possibility of sale only the estate of the tax debtor.² Under the first type of statute a tax sale followed by a delivery of the tax deed after the period allowed for redemption would, provided all statutory requirements were exactly followed and the taxes in default were levied and assessed in accordance with law, pass a fee simple to the purchaser. But where only the estate of the tax debtor can be disposed of, *caveat emptor*.

It frequently happens that a tax lien attaches to the *corpus* of land held adversely to the holder of the legal title. If the tax lien attaches to the land after the Statute of Limitations has run, it is, of course, incumbent on the new owner of the land to discharge the tax thereon, even though the holder of the record title was named in the assessment. Where the lien attaches to the land *before* the adverse possession has ripened into title it may be asked whether such a lien will prevent the acquisition of title when the period prescribed by the statute has expired. There is no good reason why it should do so. An adverse possessor acquires a title independent of the former owner. But it is clear that the land remains subject to the lien, and that the owner under the statute must pay the taxes or suffer foreclosure.³ It is sometimes said that twenty years' adverse possession creates a paramount title. This should be qualified. The land so acquired remains subject to an easement in favor of the owner of adjoining premises unless the holding has been adverse to the easement.⁴ Where a lien is imposed on the very land itself, possession cannot be adverse to it, and no period of holding can destroy it any more than it can destroy the land.

The next question is whether a sale of land on foreclosure of such a lien interrupts the adverse possession, so that no title is acquired against the purchaser for taxes until the Statute of Limitations has run anew after the delivery of the tax deed. The answer is emphatically in the

tributed to the subjection of the vessel to a restraint. In such event, the shipowner is not excused from performance of a contract by the restraint-of-princes clause. But unless he himself contributed to the loss, he can still recover upon a policy of insurance. See CARVER, CARRIAGE OF GOODS BY SEA, 6 ed., § 88; SCRUTTON, CHARTER-PARTIES AND BILLS OF LADING, 7 ed., 195-98. Cf. *Dunn v. Bucknall Brothers*, [1902] 2 K. B. 614.

¹ See 2 TIFFANY, REAL PROPERTY, § 573.

² See *Ibid.*, §§ 467-70. See BLACK, TAX TITLES, 2 ed., § 419.

³ As long as the sovereign has something less than ownership of the land the proprietary right of the adverse possessor clearly should be protected. The state will recognize his right to compensation when the land is taken by right of eminent domain before the statute has tolled the entry. *Perry v. Clissold*, [1907] A. C. 73. See 20 HARV. L. REV. 563, 574. See, also, 27 HARV. L. REV. 496.

⁴ Another situation where the adverse possessor may acquire land subject to encumbrance is found in the case of equitable servitudes, or restrictions enforceable only in equity. *Re Nisbet and Potts' Contract*, [1905] 1 Ch. 391, affirmed, [1906] 1 Ch. 386. See 18 HARV. L. REV. 608.

affirmative. It has been said that adverse possession is interrupted because of a policy of the law suggested by the principle *nullum tempus occurrit regi*. The argument is that as adverse possession does not deprive the sovereign of title, acquisition of title by the sovereign interrupts the continuity of the adverse holding.⁵ The difficulty with this reasoning is in the premise, because a tax sale does not require "even a momentary title to the land" in the sovereign.⁶ Where there is a forfeiture or purchase by the state for taxes the argument seems sound.⁷ But ordinarily the state is only a lienholder. It disposes of its lien at the tax sale, and after the period for redemption expires, the purchaser gets his tax deed and with it a new, independent title. It is this independent title, giving a new right of entry, which splits the adverse possession.⁸

The foreclosure of a lien on an estate in the land as distinguished from a lien on the land itself does not give the purchaser an independent title. This rule has been illustrated recently in Virginia⁹ where a statute makes the tax a lien on the interest of the party assessed.¹⁰ The Statute of Limitations barred the right of entry of the party taxed (who was assumed to be the owner) before the foreclosure of the lien. Since the statute destroyed the estate, it was held that the lien fell with it, so that the subsequent purchase and conveyance by the state were nugatory. In the case *McClanahan's Adm'r et al. v. Norfolk & W. Ry. Co. et al.*¹¹ principally relied upon, possession adverse against a judgment debtor for the required period starved the judgment lien. It would seem immaterial whether the adverse possession began prior to the birth of the lien, as in this case, or after. Where the lien is a parasite on a particular estate, the same result must follow as long as possession is adverse to the owner of the estate, whether tax debtor,¹² judgment creditor, or mortgagor.¹³ The grantee of an estate subject to a tax lien acquires no right against the lienor, or purchaser, at the foreclosure

⁵ See *Davies v. Collins et al.*, 43 Fed. 31, 33 (1890).

⁶ See *Harrison v. Dolan*, 172 Mass. 395, 396, 52 N. E. 513 (1899). The court intimated that even if the state had acquired title, the continuity would not have been broken, because by statute in Massachusetts adverse possession is efficacious against the Commonwealth. See 12 HARV. L. REV. 569.

⁷ *Armstrong v. Morrill*, 14 Wall. (U. S.) 120 (1871). In this case lands forfeited for nonpayment of taxes were allowed to be redeemed, by statutory enactment. Strong, Davis, and Bradley, JJ., dissented from the decision that adverse possession before the forfeiture and after the redemption could not be tacked.

The reason for the rule *nullum tempus occurrit regi*, that it is against public policy that public rights and property should be prejudiced by the negligence of public officers, would not necessarily preclude the tacking of adverse possession enjoyed before and after the period in which the sovereign had title. For a discussion of the maxim, see BUSWELL, LIMITATIONS AND ADVERSE POSSESSION, § 97.

⁸ This is the "subtle argument" suggested by Judge Holmes in *Harrison v. Dolan*, *supra*. There the disseisee purchased a quitclaim of the tax title from the purchaser of the tax deed. The argument was evaded on the ground that the purchaser of the tax title was disseised by the continued possession of the defendant and that prior to STAT. 1891, c. 354, 398, the common-law rule prevailed that a disseisee cannot assign his right of entry.

⁹ *Virginia and West Virginia Coal Co. v. Charles*, 254 Fed. 379, 390 (1918).

¹⁰ VIRGINIA CODE, § 661.

¹¹ 96 S. E. 453 (Va., 1918).

¹² *Jordan v. Higgins et al.*, 63 Texas, 150 (1885).

¹³ *Le Roy v. Rogers*, 30 Cal. 229 (1866).

sale, by reason of possession, because the estate is preserved and with it the lien.¹⁴ The tax lien is superior to all other liens, but must attach to the land itself, or it may be lost by limitation.

FEDERAL ENCROACHMENT ON THE POLICE POWER: HARRISON ANTI-NARCOTIC ACT. — Strict constructionist and states' rights exponents have received a fresh defeat in the decision of the Supreme Court,¹ upholding as constitutional section 2 of the Harrison Anti-Narcotic Act.² The act in addition to laying an annual tax of one dollar on all registered "dealers" contains in section 2 regulations and restrictions governing the sale, dispensing and distribution of opium and its derivatives, and provides in section 9 a heavy penalty for the violation of the act. The defendant, a physician, was indicted for violation of the act in selling heroin, "not in pursuance of a written order," and "not in the regular course of his professional practice." Upon demurrer to the indictment

¹⁴ *Pratt v. Pratt*, 96 U. S. 704 (1877).

¹ *United States v. Doremus*, U. S. Sup. Ct., Oct. Term, 1918, No. 367. It is interesting to note that four of the justices dissented, adopting the opinion of the court below.

² 38 STAT. AT L. 785. Section 2 provides in part:

"It shall be unlawful for any person to sell, barter, exchange, or give away any of the aforesaid drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue. Every person who shall accept any such order, and in pursuance thereof shall sell, barter, exchange or give away any of the aforesaid drugs, shall preserve such order for a period of two years in such way as to be readily accessible to inspection by any officer, agent, or employee of the Treasury Department duly authorized for that purpose, and the State, Territorial, District, municipal, and insular officials named in section five of this Act. Every person who shall give an order as herein provided to any person for any of the aforesaid drugs shall, at or before the time of giving such order, make or cause to be made a duplicate thereof on a form to be issued in blank for that purpose by the Commissioner of Internal Revenue, and in case of the acceptance of such order, shall preserve said duplicate for a period of two years in such a way as to be readily accessible to inspection by the officers, agents, or employees and officials hereinbefore mentioned. Nothing contained in this section shall apply —

"(a) To the dispensing or distribution of any of the aforesaid drugs to a patient by a physician, dentist, or veterinary surgeon regularly registered under this Act in the course of his professional practice only: Provided, That such physician, dentist, or veterinary surgeon shall keep a record of all such drugs dispensed or distributed, showing the amount dispensed or distributed, the date, and the name and address of the patient to whom such drugs are dispensed or distributed, except such as may be dispensed or distributed to a patient upon whom such physician, dentist, or veterinary surgeon shall personally attend; and such record shall be kept for a period of two years from the date of dispensing or distributing such drugs, subject to inspection, as provided in this Act.

"(b) To the sale, dispensing or distribution of any of the aforesaid drugs by a dealer to a consumer under and in pursuance of a written prescription issued by a physician, dentist, or veterinary surgeon registered under this Act: Provided, however, That such prescription shall be dated as of the day on which signed and shall be signed by the physician, dentist, or veterinary surgeon who shall have issued the same: And provided further, That such dealer shall preserve such prescription for a period of two years from the day on which such prescription is filled in such a way as to be readily accessible to inspection by the officers, agents, employees, and officials hereinbefore mentioned."